

2014 AUG 23 AM 10:00  
BOARD OF HEALTH  
TEWKSBURY, MASSACHUSETTS

**Regulation of the Tewksbury Board of Health**  
**Chapter 11: Restricting the Sale of Tobacco Products**

**11.1 Statement of Purpose:**

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat<sup>1</sup>;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,<sup>3</sup> and that it is addiction to nicotine that keeps youth smoking past adolescence<sup>4</sup>;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers<sup>5</sup>;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke<sup>6</sup>;

Whereas cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth<sup>7</sup>;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%<sup>8</sup>;

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<sup>1</sup> Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

<sup>2</sup> CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/sgt/2010/](http://www.cdc.gov/tobacco/data_statistics/sgt/2010/).

<sup>3</sup> U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

<sup>4</sup> *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

<sup>5</sup> *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

<sup>6</sup> SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

<sup>7</sup> CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

<sup>8</sup> Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Tewksbury Board of Health Regulations*

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year old’s who smoked cigars reported smoking cigar brands that were flavored<sup>9</sup>;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking<sup>10</sup>;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction<sup>11</sup>;

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale<sup>12</sup>;

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation<sup>13</sup>;

Whereas menthol makes it easier for youth to initiate tobacco use<sup>14</sup>;

Whereas use of e-cigarettes among students in Massachusetts is 20.1%, representing a 78% increase for high schoolers and a 48% increase for middle schoolers from 2017 to 2018<sup>15</sup>;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”<sup>16</sup>;

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*Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: [www.ncbi.nlm.nih.gov/pubmed/21809109](http://www.ncbi.nlm.nih.gov/pubmed/21809109).

<sup>9</sup> Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., Tob Control, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

<sup>10</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>11</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf); U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>12</sup> See fn. 3 at p. 85.

<sup>13</sup> [www.fda.gov/downloads/ucm361598.pdf](http://www.fda.gov/downloads/ucm361598.pdf), <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

<sup>14</sup> [www.tobaccofreekids.org/assets/factsheet/0390.pdf](http://www.tobaccofreekids.org/assets/factsheet/0390.pdf)

<sup>15</sup> MA YRBS 2017

<sup>16</sup> 310 CMR 30.136

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Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes<sup>17</sup>;

Whereas educational institutions that sell tobacco products to a younger population, who is particularly at risk for becoming smokers is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms; and

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”<sup>18</sup>.

Now, therefore it is the intention of the Tewksbury Board of Health to regulate the sale of tobacco products.

### **11.2 Authority:**

This regulation is promulgated pursuant to the authority granted to the Tewksbury Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

### **11.3 Definitions:**

For the purpose of this regulation, the following words shall have the following meanings:

**Blunt Wrap:** Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

**Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

**Characterizing Flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

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<sup>17</sup> King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health*. [Article in press], [www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract](http://www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract).

<sup>18</sup> *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).  
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**Child-Resistant Package:** Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 *et seq.*, pursuant to 15 U.S.C. 1471 through 1476.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

**Component Part:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

**Constituent:** Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

**Coupon:** Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

**Distinguishable:** Perceivable by either the sense of smell or taste.

**Educational Institution:** Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

**Electronic Nicotine Delivery System:** An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that “electronic nicotine delivery system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

**Employee:** Any individual who performs services for an employer.

**Employer:** Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

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**Flavored Tobacco Product:** Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a Flavored Tobacco Product.

**Health Care Institution:** An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

**Liquid Nicotine Container:** A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

**Listed or Non-Discounted Price:** The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the stated price, and before the application of any discounts or coupons.

**Non-Residential Roll-Your-Own (RYO) Machine:** A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

**Permit Holder:** Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

**Person:** Any retailer, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

**Retail Tobacco Store:** An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Tewksbury Board of Health.

**Retailer:** A person that operates a retail establishment.

**Self-Service Display:** Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

**Schools:** Public or private elementary or secondary schools.

**Smoke Constituent:** Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

**Smoking Bar:** An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises only; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the Town of Tewksbury; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar.

**Tobacco Product Flavor Enhancer:** Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.

**Tobacco Product:** A product containing or made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that “tobacco product” shall also include any component, part or accessory of a tobacco product; and provided further, that “tobacco product” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

**Vending Machine:** Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

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**11.4.1 No Tobacco Sales to Persons Under Twenty-One (21) Years Old:**

11.4.1 No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.

**11.4.2 Required Signage:**

11.4.2.1 All retail establishments, including adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health. Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) except in the case of smoking bars, notice to consumers that the sale of flavored electronic nicotine systems are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

11.4.2.2 All adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."

11.4.3 Identification: Each person selling or distributing tobacco products, or admitting entrance into an adult-only retail tobacco store, shall first verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.

11.4.4 All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

**11.5 Tobacco Product Sales Permit:**

11.5.1 No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the Town of Tewksbury without first obtaining a Tobacco Product Sales Permit issued annually by the Tewksbury Board of Health. Only owners of establishments with a permanent, non-mobile location in Tewksbury are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Tewksbury.

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**11.5.2** As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Tewksbury regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws about the sale of tobacco and this regulation. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he or she has read the regulation and applicable state laws.

**11.5.3** Each applicant who sells tobacco products is required to provide proof of current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

**11.5.4** A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee shall be determined by the Tewksbury Board of Health annually.

**11.5.5** A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

**11.5.6** Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

**11.5.7** Issuance and holding of a Tobacco Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.

**11.5.8** A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.

**11.6 Prohibition of Smoking Bars:**

Smoking Bars are prohibited in the Town of Tewksbury.

**11.7 Cigar Sales Regulated:**

No person shall sell or distribute or cause to be sold or distributed a single cigar.<sup>1</sup>

No person shall sell or distribute or cause to be sold or distributed any original package of two

or more cigars, unless such package is priced for retail sale at \$5.00 or more.

This Section shall not apply to:

The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.

A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Tewksbury.

**11.8 Sale of Flavored Tobacco Products Prohibited:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Retailers must obtain from a manufacturer documentation certifying that products sold by the retailer, do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010).

**11.9 Nicotine Content in Electronic Nicotine Delivery Systems:**

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to retail tobacco stores. Retailers must obtain from a manufacturer documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter (105 CMR 665.010(C)).

**11.10 The Sale of Blunt Wraps:**

No person or entity shall sell or distribute blunt wraps within Tewksbury, except that retail tobacco stores are permitted to sell or distribute blunt wraps.

**11.11 Free Distribution and Coupon Redemption: No person shall:**

**11.11.1** Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;

**11.11.2** Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price.

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**11.12 Out-of-Package Sales:**

**11.12.1** The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

**11.12.2** Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Tewksbury Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.

**11.12.3** All permit holders must comply with 940 CMR 21.05 which reads: “It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq.”

**11.13 Self-Service Displays:**

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

**11.14 Vending Machines:**

All vending machines containing tobacco products, as defined herein, are prohibited.

**11.15 Non-Residential Roll-Your-Own Machines:**

All Non-Residential Roll-Your-Own machines are prohibited.

**11.16 Prohibition of the Sale of Tobacco Products by Health Care Institutions:**

No health care institution located in Tewksbury shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

**11.17 Prohibition of the Sale of Tobacco Products by Educational Institutions:**

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No educational institution located in Tewksbury shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

**11.18 Prohibiting Smoking in Workplaces and Public Places:**

**11.18.1** The Tewksbury Board of Health adopts the Massachusetts Smoke-Free Workplace Law (Massachusetts General Law Chapter 270, Sections 21 and 22) by reference and any future revisions as a local regulation.

**11.18.2** Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is also hereby prohibited in the following locations: retail tobacco stores.

**11.18.3** The use of an electronic nicotine delivery system is prohibited wherever smoking is prohibited per all Massachusetts state laws and regulations, including, but not limited to, General Laws Chapter 270, Section 22.

**11.19 Incorporation of State Laws and State Regulations:**

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at M.G.L. Ch. 270, §6 and 105 CMR 665.000.

**11.20 Violations:**

**11.20.1** It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation that incorporate MGL Ch. 270, Section 6 and 105 CMR 665, the following penalties apply:

**11.20.1.1** In the case of a first violation, a fine of one thousand dollars (\$1000.00) and a mandatory appearance before the Tewksbury Board of Health to explain the plan he or she has developed to avoid additional violations.

**11.20.1.2** In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for at least one (1) day and up to seven (7) consecutive business days.

**11.20.1.3** In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for at least seven (7) consecutive business days and up to thirty (30) consecutive business days.

**11.20.2** For violations of all other sections specific to the Town of Tewksbury, the violator shall receive:

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**11.20.2.1** In the case of a first violation, a fine of one hundred dollars (\$100.00) and a mandatory appearance before the Tewksbury Board of Health to explain the plan he or she has developed to avoid additional violations.

**11.20.2.2** In the case of a second violation within twenty-four (24) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.

**11.20.2.3** In the case of three or more violations within a twenty-four (24) month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

**11.20.2.4** In the case of more than three violations of this regulation within a twenty-four (24) month period, or even one violation deemed by the Tewksbury Board of Health a willful and egregious violation, the Tewksbury Board of Health may revoke a Tobacco Product Sales Permit.

**11.20.2.5** State Law Fines and Regulation Fines:

**Policies Subject to State Law Fines**  
**(G.L. Chapter 270, §6 and 105 CMR 665.000**

- Tobacco and Vape Sales to persons under the age of 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §6)
- Required Retailer Signage (105 CMR 665.015)
- Ban on Free Distribution (105 CMR 665.025)
- Ban on Self-Service Displays (105 CMR 665.010(B))
- Ban on Out-Of-Package Sales (105 CMR 665.030)
- Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))
- Failure to Check Identification of Purchaser (105 CMR 665.020)
- Nicotine Content in Electronic Nicotine Delivery Systems (G.L. Ch. 270, §6)
- Coupon Redemption (105 CMR 665.025)
- Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)
- Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))
- Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))
- Admitting a minor into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))

**Policies Subject To Local Regulation Fines (Section R.2)**

- Prohibition of the Sale of Blunt Wrap
- Ban on Smoking Bars
- Cigar Sales Regulated
- Tobacco Product Sales in Health Care Institutions
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Mass. Department of Revenue license(s)
- Local Tobacco Sales Permit Requirement for retailers who are neither Smoking Bars nor Retail Tobacco Stores
- Smoking in Workplaces and Public Spaces

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**11.20.3** Refusal to cooperate with inspections pursuant to this regulation may result in the suspension or revocation of the Tobacco Product Sales Permit depending on the circumstances.

**11.20.4** In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended, or any non-permit holder who engages in such sale or distribution, may be subject to the suspension of all Tewksbury Board of Health issued permits for thirty (30) consecutive business days.

**11.20.5** The Tewksbury Board of Health shall provide notice of the intent to suspend a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Tewksbury Board of Health's decision and its reasons therefor in writing. After a hearing, the Tewksbury Board of Health may suspend the Tobacco Product Sales Permit if the Tewksbury Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Tewksbury Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the sales floor out of customer view and stored in a secured area approved by the Tewksbury Board of Health. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

**11.20.6** For purposes of such fines, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

**11.21 Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

**11.22 Enforcement:**

Enforcement of this regulation shall be by the Tewksbury Board of Health or its designated agent(s).

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Tewksbury Board of Health or its designated agent(s) and the Tewksbury Board of Health or its designated agent(s) shall investigate.

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**11.23 Severability:**

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

**11.24 Effective Date:**

This regulation supersedes the prior regulation title “Chapter 11: Tobacco Control – Restricting the Sale of Tobacco Products & Nicotine Delivery Products: that took effect on January 2013 and was amended on March 17, 2016. This regulation has been re-written to incorporate by reference 105 CMR 665.00: Minimum standards for retail sale of tobacco and electronic nicotine delivery systems and MGL Chapter 270, Section 6.

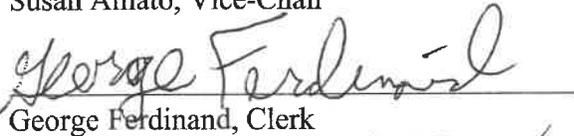
This regulation was adopted on January 19, 2023.

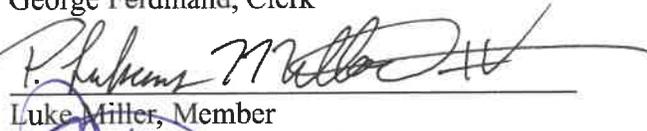
This regulation shall take effect on February 1, 2023.

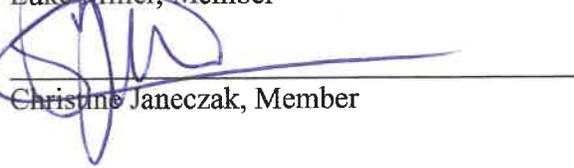
Missing language to Sections 11.20.1.1 and 11.20.2.1 regarding retailer mandatory attendance to original regulation added August 22, 2024

  
Melissa Braga, Chair

  
Susan Amato, Vice-Chair

  
George Ferdinand, Clerk

  
Luke Miller, Member

  
Christine Janeczak, Member

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